

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	2:11-CR-245-RCJ (GWF)
	)	
v.	)	
	)	
MARKEITH BRANSCUMB,	)	
	)	
Defendant.	)	
_____	)	

**United States' Motion To Amend Judgment**

**Background and Facts**

COMES NOW the United States of America, by and through the United States Attorney for the District of Nevada, and moves this Court, pursuant to Rule 36, Fed. R. Crim. P., to amend the order of Judgment and Commitment that this court entered in the above-captioned case on March 22, 2012. Docket #30, #31.

In this case, the defendant was indicted for unlawful possession of a firearm, in violation of 18 U.S.C. § 922(g) and pled guilty to that charge on October 12, 2011. #1, #20.

After defendant's change of plea, this Court entered a Preliminary Order of Forfeiture on December 13, 2011, in which Court found, pursuant to Fed R. Crim P. 32.2(b)(1) and (2), that the United States of America had shown the requisite nexus between the property set forth in the

1 Forfeiture Allegation of the Criminal Indictment and the offense to which defendant Markeith  
2 Branscumb pled guilty. The Preliminary Order forfeited firearms possessed by the defendant.  
3 #22.

4 Defendant's sentencing hearing was held on March 6, 2012. Typically, during the  
5 course of a sentencing hearing, Government counsel will request, or the Court will  
6 declare, *sua sponte*, that the forfeiture order will be appended to, and made a part of, the  
7 signed Judgment and Commitment. This practice is consistent with the mandate of Rule  
8 32.2 (b)(4)(B), Fed. R. Crim. P., which states that the Court "must also include the  
9 forfeiture order, directly or by reference, in the judgment, but the Court's failure to do so  
10 may be corrected at any time under Rule 36." While it was (and is) the intent of the  
11 Government that this Court make the final order of forfeiture a part of the Judgment and  
12 Commitment, apparently no such statement of incorporation was made at the sentencing  
13 by the Court or counsel.

14 After the sentencing hearing that was held on March 6, 2012, defendant's counsel  
15 consented to, and the Government filed, a (proposed) Final Order of Forfeiture, which  
16 this Court signed and entered on March 28, 2012. #33.

17 The straightforward provisions of Rule 36, Fed. R. Crim. P., provide that: "After  
18 giving any notice it considers appropriate, the court may **at any time** correct a clerical  
19 error in a judgment, order or other part of the record, or correct an error in the record  
20 arising from oversight or omission." (emphasis added).<sup>1</sup>

21 That it was this Court's intent to impose a forfeiture sanction against the defendant  
22 is apparent from its execution of the Preliminary Order of Forfeiture (#22) several months  
23 prior to the sentencing hearing. However, to give that independent order the force and  
24

---

25 <sup>1</sup>Consistent with standard practice, the United States will serve defendant's counsel with a  
26 copy of this motion to satisfy the notice requirement embodied in Rule 36.

1 effect of a judgment, the Final Order of Forfeiture (#33) should, as Rule 32.2 requires, be  
2 incorporated by reference, as well as by physical attachment, to the Judgment and  
3 Commitment form.

4 In addition, at the bottom of the "Schedule of Payments" page of the Judgement  
5 and Commitment, we request that this Court check the box that denotes the following  
6 language: "The defendant shall forfeit the defendant's interest in the following property  
7 to the United States:" Underneath that checked box we request that the following  
8 language be included:

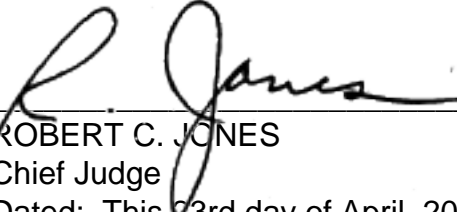
9 "See attached Final Order of Forfeiture"

10 Because Rule 36 gives this Court expansive authority to correct a clerical error or  
11 oversight; because it was the intent of this Court and the Government that the defendant  
12 forfeit the firearms involved in this lawsuit; and because it will serve the ends of justice to  
13 make a correction to the Judgment and Commitment, as described above, that complies  
14 with the requirements of Rule 36, the United States requests that the Judgment and  
15 Commitment be modified accordingly and that a copy of the Final Order of Forfeiture be  
16 appended thereto.

17 WHEREFORE, the United States requests that its motion, in its entirety, be  
18 granted.

19 ORDER

20 IT IS SO ORDERED.

21  
22   
23 \_\_\_\_\_  
24 ROBERT C. JONES  
25 Chief Judge  
26 Dated: This 23rd day of April, 2012.